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10/009,306	04/16/2002	Francis Showering	NOVAP100US	8228

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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

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Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/009,306
Filing Date: April 16, 2002
Appellant(s): SHOWERING, FRANCIS

MAILED

SEP 22 2005

Group 3700

Himanshu S. Amin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05 July 2005 appealing from the Office action mailed 04 February 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

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The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,368,178	Towns et al.	11-1994
5,762,217	Ohmi et al.	6-1998
5,848,717	Bosl et al.	12-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 58-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosl et al. US 5,848,717 in view of Ohmi et al. US 5,762,217.

Claims 58-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Towns et al. US 5,368,178 in view of Ohmi et al. US 5,762,217.

(10) Response to Argument

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Appellant argues in (A) the validity of the combination of Bosl in view of Ohmi, and, Towns in view of Ohmi.

First, Examiner notes all three patents are drawn to containers for carbonated beverages, as per the disclosures of each reference. Therefore, all three patents are drawn to solving the same problem, i.e. sealing containers containing carbonated beverages. Therefore, one having ordinary skill in the art would have knowledge of the technologies taught by of each these patents.

In response to the Appellant's assertion that a prima facie case of obviousness has not been made, the Examiner notes the MPEP teaches in 2144, "The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art."

The Appellant's main argument is that the ring member (2) of Ohmi cannot be considered without also considering the sealing plug, citing *W.L. Gore and Associates, Inc. v. Garlock, Inc.*, furthermore asserting that the Examiner has used hindsight reasoning in only choosing the ring of Ohmi without further considering the sealing plug. However, it is the Examiner's contention that the teachings of Ohmi would lead one having ordinary skill to recognize the sealing structure as being a mechanically independent feature from the sealing disc, thus allowing one having ordinary skill to apply the ring structure in a related application, in order to obtain the benefits taught therein, without having to consider the structure of the sealing plug.

Note Ohmi, column 3, lines 11-20: "Since in the present invention an opening tab is formed in a part of the ring member, divergence occurs between the ring member and the skirt portion at the cutting face by pushing up or down the tab whereby the bridge portion connecting the cap proper with the ring member is cut off by a shearing force. Because slits are formed in the skirt portion of the cap proper, when the ring member is removed from the skirt portion, the skirt portion is freely broadened diametrically outwardly. Thus, the cap proper is easily eliminated from the mouth portion of the container and can be opened easily without using a tool."

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This passage teaches the ring actually serves a separate purpose than the sealing ring – to promote an easy removal of the cap from the container. It is the Examiner's contention that one having ordinary skill would recognize the ring as a feature to assist a user in removal of the cap when first opening the container, and would not have to further consider any sealing structure. The ring serves to maintain radial pressure about the circumference of the cap, keeping the slotted skirt tight around the bottle neck, and maintaining contact between beads/protrusions (7) and bottle neck undercut/concave portion (6). Opening tab (13) provides a user leverage to fracture the frangible connections about the ring, thus expanding the cap skirt, and allowing removal of the cap without a tool.

Bosl and Towns are both patents that only engage a bottle at the top and exterior surfaces. Both Towns, and Bosl's embodiment of figure 1, depend on a sealing bead snapped under a container neck bead to keep the cap fixed in sealing contact with the container. As neither patent teaches any form of grip or tab, it is presumed that these would require a tool such as a bottle opener, if not substantial human force, to pry the cap from the container. Ohmi, as noted above, teaches the sealing ring serves to provide a user with a means to more easily remove a cap from a container, relying on leverage to snap the ring from about the cap, thus permitting expansion of the container circumference, and facilitating removal of the cap.

The Examiner thus offers to the Board that one having ordinary skill would find it desirable to apply the ring and the slotted skirt taught by Ohmi, to the caps of Towns or Bosl, in order to gain the benefit of easy removal of the cap. By slotting the skirt of these respective patents, and providing a locking ring to provide radial force to prevent circumferential expansion while under pressure from the carbonation of the contents contained therein, one can allow a user to open these caps with less force, and without an opening tool, as taught by Ohmi. Furthermore, as the ring of Ohmi serves to keep the skirt intact and thus keep the bead locked under the container undercut, the application of the ring to Towns or Bosl would maintain the cap beads of those respective patents locked under their respective container necks, maintaining sealing contact between the cap and container opening, thus leading to a reasonable expectation of success.

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In response to Appellant's contention in (A) and (B) that the combination does not teach each and every element of the claimed invention, Examiner notes the basis of the argument is that the plug seal of Ohmi must be considered in conjunction with the sealing ring. As discussed above, it is the Examiner's contention that one of ordinary skill would see the separate mechanical functions performed by the ring and slotted skirt, and the sealing plug, and would therefore not be lead to apply the sealing plug in conjunction with the sealing ring, in order to gain the disclosed advantage gained by applying the ring.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

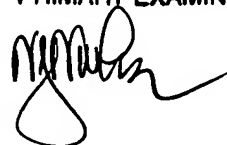
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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

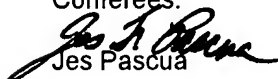
Respectfully submitted,

James Smalley

NATHAN J. NEWHOUSE
PRIMARY EXAMINER



Conferees:


Jes Pascua
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